Supreme Court, U.S.
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No. 87-1060

In The

Supreme Court of the United States

October Term, 1987

LYNDA CASSIDY TAYLOR LOGEMANN,
INDIVIDUALLY AND AS TRUSTEE OF
THE McCARTY RANCH TRUST,

v. *Appellant,*

ROBERT F. CRAIG, TRUSTEE OF
CASSIDY LAND & CATTLE COMPANY, INC.,

Appellee.

**ON APPEAL FROM THE
SUPREME COURT OF NEBRASKA**

MOTION OF APPELLEE TO DISMISS OR AFFIRM

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QUESTION PRESENTED

Does this Court have appellate jurisdiction under 28 U.S.C. § 1257(2) to accept for decision a case appealed from the highest court of a state when the validity of a state statute has not been decided?

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The appellee Robert F. Craig moves the Court to dismiss the appeal or, in the alternative, to affirm the judgment of the Nebraska Supreme Court without further argument on the ground that the Court is without jurisdiction. While appellant asserts jurisdiction under 28 U.S.C. § 1257(2), which supports jurisdiction to

review cases upholding the constitutionality of challenged state statutes, a review of the lower courts decision makes it clear that this case has never involved any issue concerning the constitutionality of a state statute.

OPINION BELOW

The opinion of the Nebraska Supreme Court is reported at 226 Neb. 587, 412 N.W.2d 857 (1987) and is reprinted in appellant's Appendix A of her jurisdictional statement.

STATEMENT OF THE CASE

The appellant's jurisdictional statement misstates the holding of the Nebraska Supreme Court in *Craig v. Logemann*, 226 Neb. 587, 412 N.W. 2d 857 (1987). In *Craig* the Nebraska Supreme Court simply held that state courts will not permit relitigation on the issue of whether a federal court had jurisdiction to decide a case. The Nebraska Supreme Court stated, "It is a sufficient answer that in all cases of apparent conflict between the state and federal courts the latter are the exclusive judges of their jurisdiction over the subject of the action. (*Freeman v. Howe*, 24 How. [65 U.S.], 459.)" 226 Neb. at 589, 412 N.W.2d at 858. The holding was consistent with the limited–if not nonexistent–ability of a state court to review the decision of a federal court.

The trial court's order in this case quieted title to real property in the appellee which he had obtained in

a federal court mortgage foreclosure action. The United States Bankruptcy Court and the United States District Court for the District of Nebraska had held that the Bankruptcy Court had jurisdiction to conduct the mortgage foreclosure action. *Craig v. McCarty Ranch Trust,* 69 B.R. 649 (D. Neb. 1987). That decision has recently been affirmed by the Eighth Circuit Court of Appeals. *Craig v. McCarty Ranch Trust,* No. 87-1181 (8th Cir. January 12, 1988).

When this quiet title action was subsequently filed in the state district court, appellant attempted to again challenge the federal court's jurisdiction to conduct the mortgage foreclosure action. That challenge was rejected by both the state trial and appellate courts.

At no time prior to the filing of appellant's jurisdictional statement has any challenge been lodged dealing with the constitutionality of any state statute. Consequently, there was no opportunity for either court to uphold a state statute's constitutionality when challenged by federal law.

ARGUMENT

The appeal of the decision below is not within the Court's jurisdiction under 28 U.S.C. 1257(2).

In the trial and appeal below appellant argued that state law requires all mortgage foreclosures to be conducted in the state district court where the land is located. Neb. Rev. Stat. § 25-2137 (Reissue 1985) Therefore, the bankruptcy court had no jurisdiction to entertain mortgage foreclosure actions. Jurisdictional Statement of Appellant at 4, 5.

At no time had the appellant drawn into question the validity of a state statute as being repugnant to the Constitution, treaties or laws of the United States as required by 28 U.S.C. § 1257(2). The requirement of 28 U.S.C. § 1257 that a state statute must be "drawn into question" has been interpreted to mean:

> First, the state court must have acted upon the strong influence, if not the command, of the statute. Second, the court must have taken its own action or approved other official action against a protest that federal law prohibits reliance on the statute to achieve the consequences that result to that litigant.

16 C. Wright, A. Miller, E. Cooper & E. Gressman, *Federal Practice and Procedure: Jurisdiction* § 4012 (1977). The appellant has not met either prong of the test.

The Nebraska Supreme Court's decision in *Craig* was entirely based on well established rules of federalism and not upon any state statute or federal law. The principle relied upon was first annunciated in *Freeman v. Howe*, 65 U.S. (24 How.) 450 (1861). "[I]t belongs to the Federal courts to determine the question of their own jurisdiction, the ultimate arbiter, the supreme judicial tribunal of the nation. . . ." 65 U.S. at 459. Observance of this rule is critical for the efficient functioning of our federal system. As this Court observed in *Freeman* a contrary rule would mean,

> [I]n every case the question of jurisdiction could be made; and until the power was assumed by the state court, and the question of jurisdiction of the Federal court was heard and determined by it, it could not be known whether in the given case it existed or not. We need scarcely remark that no

> government could maintain the administration or execution of its laws, civil or criminal, if the jurisdiction of its judicial tribunals were subject to the determination of another. *Id.*

The evil cautioned against in *Freeman* is exactly the tactic adopted by the appellant, which was rejected by the Nebraska courts.

In another context, an adjunct to the rule of *Freeman v. Howe* was stated in *Donovan v. Dallas*, 377 U.S. 408, 412 (1964) as follows, "Early in the history of our country a general rule was established that state and federal courts would not interfere with or try to restrain each other's proceedings." Relitigating a federal-court's jurisdiction in every state court proceeding amounts to, in essence, interference in the federal judicial system's operation.

In addition to the federalism principles annunciated in *Freeman v. Howe*, the state court decision in *Craig v. Logemann* can be viewed as being based in the priority principle. 20 Am. Jur. 2d *Courts* § 128; 21 C.J.S. *Courts* § 529. As applied to in rem actions such as mortgage foreclosures, the court which first assumes jurisdiction has exclusive jurisdiction until completion of the case. Since the court first acquiring jurisdiction cannot be interfered with by a later reviewing court, the first court is the exclusive judge of its own jurisdiction. The priority principle is followed by this Court. *Princess Lida v. Thompson*, 305 U.S. 456, 466 (1939); *Penn General Casualty Co. v. Pennsylvania*, 294 U.S. 189, 195 (1935); *Kline v. Burke Construction Co.*, 260 U.S. 226, 235 (1922). As this Court stated in *Kline* this rule is one of "right and of law, based upon necessity." 260 U.S. at 235.

The underlying state court case was decided upon concepts of federalism or the priority principle; neither decisional basis subject to this Court's review.

CONCLUSION

It is manifestly clear that the appellant's case is not within the jurisdictional review of this court. Appellant's argument for jurisdiction is so far wrong that it represents a form of legal reasoning dyslexia. For the foregoing reasons the appellee respectfully moves that this appeal be dismissed or affirmed.

Respectfully submitted,

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